

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-2401

United States of America,

Appellee,

v.

Ronald Howard Cleveland, Jr.,

Appellant.

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* Appeal from the United States

* District Court for the

* District of Minnesota.

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* [UNPUBLISHED]

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Submitted: April 1, 2008

Filed: April 3, 2008

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Ronald Cleveland challenges the 92-month prison sentence imposed by the district court¹ after he pleaded guilty to bank robbery. Cleveland's counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), questioning the reasonableness of Cleveland's sentence and asserting that the district court should have granted Cleveland's motion for a departure or variance from the applicable Guidelines range. Counsel has separately moved to remand for resentencing in light of United States v. Gall, 128 S. Ct. 586, 594-95 (2007) (rejecting appellate rule

¹The Honorable John R. Tunheim, United States District Judge for the District of Minnesota.

requiring extraordinary circumstances to justify sentence outside Guidelines range). We affirm, because the district court's clearly discretionary decision not to depart is unreviewable, and the court did not abuse its discretion by refusing to grant a variance. See United States v. Godinez, 474 F.3d 1039, 1043 (8th Cir. 2007) (decision not to depart is unreviewable where court clearly recognized its authority to do so; court did not abuse its discretion by refusing to grant variance because it considered 18 U.S.C. §3553(a) factors and determined sentence within advisory range was appropriate); United States v. Haack, 403 F.3d 997, 1003-04 (8th Cir. 2005) (listing factors that might signal abuse of discretion). We see no basis to conclude that the sentence--imposed at the bottom of the advisory Guidelines range--is unreasonable, see Rita v. United States, 127 S. Ct. 2456, 2463-68 (U.S. 2007) (discussing application of presumption of reasonableness to sentence that reflected proper application of Guidelines); United States v. Harris, 493 F.3d 928, 932 (8th Cir. 2007) (sentence within advisory Guidelines range is presumptively reasonable), cert. denied, 2008 WL 424011 (U.S. Feb. 19, 2008) (No. 07-8375).

We also deny counsel's motion for a remand for resentencing because nothing in the record indicates that the court was inclined to impose a more favorable sentence but for then current Eighth Circuit precedent, or that the court otherwise felt constrained by the advisory Guidelines range. Cf. United States v. Marston, No. 06-4191, 2008 WL 623604, at *6-*7 (8th Cir. Mar. 10, 2008).

Accordingly, we affirm the judgment, and we direct counsel to inform Cleveland about the procedures for filing a petition for rehearing or filing a petition for certiorari.